

REMARKS/ARGUMENTS

Claim Rejections 35 U.S.C. §112

Claims 2 and 4 were rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant hereby makes amendments to claim 2, and cancels 4 to overcome this rejection.

Claim 2 has been amended to claim Sig. ID No. 76, instead of Sig. ID No. 5. Based on claim 2 as originally filed on the filing date, which claims Hs ID 1526 and Accession No., 001681, claim 2 refers to Sig. ID. No. 76, and not Sig. ID. No. 5. Therefore, the Applicant hereby amends claim 2 so that Sig. ID. No. 76 is recited. This is supported by item number 5 on page 8 in the original specification.

Claim Rejections 35 U.S.C. §102(e) & (b) / 35 U.S.C. §103(a)

Claims 2 and 4 were rejected under 35 U.S.C. § 102(e) as being anticipated by or, in the alternative, under 35 U.S.C §103(a) as obvious over Bertucci (20050287544). Also, claims 2 and 4 were rejected under 35 U.S.C. § 102(e) as being anticipated by Eveleigh (20040146921). Moreover, claims 2 and 4 were rejected under 35 U.S.C. § 102(b) as being anticipated by Rosen (WO 00155351). The applicant respectfully disagrees for at least the reasons discussed below and hereby makes amendments to the claims in view of Examiner's suggestions in the final office action dated January 23, 2008.

35 U.S.C. §102(e) & (b)

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (MPEP § 2131). As can be gleaned from the cited case law, the requirement is that each element must be either expressly or inherently described. In examining the cited references, it is believed that none of the cited prior art discloses each and every element of claims 2 in the currently application.

35 U.S.C. §103(a)

Office has the Burden of Proof

The applicant respectfully notes that the Office has the initial burden of setting forth a prima facie case of obviousness, and to do that the Office must identify **specific** teachings, suggestions or motivations in the prior art for making the claimed combination. Merely pointing out that various elements by themselves are known in the prior art is insufficient. Nor is it sufficient to merely state that combination of the missing elements is obvious because their combination would be beneficial. If that were the standard nothing would ever be patentable.

Patent Examiners Should Interpret Claims in Light of Specification

The court has recently indicated that the PTO should apply the principles of *Phillips v. AWH* during prosecution — rather than the PTO’s current practice of giving claims their “broadest reasonable interpretation.” *In re Johnston* (Fed. Cir. 2006). The Patent Office may use a dictionary in defining the patent applicant’s claim terms only when the patent specification did not otherwise provide any interpretation.

Applicant respectfully submits that the amendments to the claims traverse these rejections. Based on the failure of Bertucii, Eveleigh and Rosen to disclose all of the elements of claim 2, the applicant submits that all claims are in condition for allowance. Favorable reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(e), 35 U.S.C. § 102(b), and 35 U.S.C. § 103(a) are respectfully requested.

Request For Allowance

Claims 1-3, 5-79 are pending in this application. Only claim 2 is under examination, all other claims were withdrawn from examination. The applicant expresses his gratitude to the Examiner for the courtesies extended to Applicant’s undersigned representative throughout prosecution of this application. In view of the foregoing, Applicant respectfully submits that claim 2 patentably define the present invention over the citations of record. Favorable consideration is respectfully requested.

Respectfully submitted,

Application No. 10/786,148

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June 23, 2008

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